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VIA ONLINE FILING

Labor and Workforce Development Agency

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<https://www.dir.ca.gov/Private-Attorneys-General-Act/Private-Attorneys-General-Act.html>

RE: *Cindy Lee v. Foodmasters LLC DBA Matcha Café Maiko San Diego*

Dear Representative:

This office represents Cindy Lee ("**Ms. Lee**") with respect to her claims under the California Labor Code against Foodmasters LLC DBA Matcha Café Maiko San Diego ("**Employer**"). This letter is being sent simultaneously to Employer by certified mail.

Employer employed Ms. Lee from approximately December 31, 2024 to August 5, 2025, as an hourly, non-exempt employee. During her employment with Employer, Ms. Lee was employed as a Barista at Employer's location at 8270 Mira Mesa Blvd. C, San Diego, California 92126. Ms. Lee's duties consisted of providing customer service, preparing food and drinks, and cleaning workstations and dishes, among other duties as needed. Employer operates cafes in the San Diego region.

Ms. Lee intends to seek penalties for violations of the California Labor Code which are recoverable under California Labor Code section 2698, *et seq.*, the Private Attorneys General Act of 2004 ("**PAGA**"). Ms. Lee is seeking penalties solely in a representative capacity on behalf of the State of California and all current and former non-exempt employees of Employer ("**Aggrieved Employees**"). This letter is being sent in compliance with California Labor Code section 2699.3.

As detailed below, Employer violated several of California's wage and hour laws during Ms. Lee's employment, including but not limited to violations of California Labor Code sections 201, 202, 203, 204, 221, 226(a), 226.7, 246, 510, 512(a), 1174(d), 1194, 1197, 1197.1, 1198, 2800, and 2802, and the Industrial Welfare Commission Wage Orders ("**IWC Wage Order**") including *inter alia*, IWC Wage Order No. 5. These claims are based upon the following facts and theories:

1. FAILURE TO PAY FOR ALL TIME WORKED AT CORRECT RATES OF PAY, INCLUDING MINIMUM WAGES, STRAIGHT TIME WAGES, AND OVERTIME COMPENSATION

Employer has engaged in numerous unlawful practices which resulted in the failure to pay Ms. Lee and Aggrieved Employees for all time worked at the correct rates of pay, including minimum wages, straight time wages, and overtime compensation.

First, Employer regularly required Ms. Lee and Aggrieved Employees to work more than eight (8) hours in a day or forty (40) hours in a workweek, but failed to pay them overtime compensation for such work.



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Employer also failed to provide Ms. Lee and Aggrieved Employees with adequate training as to the payment of overtime compensation, all in an effort to keep its workers uninformed as to their legal right to overtime compensation. On days when Ms. Lee and Aggrieved Employees were scheduled to work both the morning and evening shifts, they were explicitly informed that they would not be compensated at their overtime rate for overtime hours worked. In addition, Employer regularly required Ms. Lee and Aggrieved Employees to work off-the-clock without pay. Ms. Lee and Aggrieved Employees regularly received work-related communications from their managers outside of their working hours when they were known to not be working. For example, Ms. Lee and Aggrieved Employees' managers would frequently text them, either directly or in group chats, to provide directions on completing work duties or feedback, such as how to improve speed or customer satisfaction after receiving negative Yelp reviews by customers. Ms. Lee and Aggrieved Employees were not compensated for this work, resulting in a failure to pay minimum wages and straight time wages. Moreover, this off-the-clock work typically caused Ms. Lee and Aggrieved Employees to work more than eight (8) hours in a day and forty (40) hours in week, resulting in a failure to pay overtime compensation.

In addition to requiring Ms. Lee and Aggrieved Employees to perform work off-the-clock without compensation, Employer also failed to accurately record the actual time worked by Ms. Lee and Aggrieved Employees, which resulted in a failure to pay Ms. Lee and Aggrieved Employees for all hours actually worked, including minimum wages, straight time wages and overtime wages. Finally, and as a matter of policy and/or practice, Employer failed to pay overtime to Ms. Lee and Aggrieved Employees for all overtime hours worked based on regular rates of pay correctly calculated to include all applicable remuneration.

As a result of the foregoing practices, Employer has failed to pay Ms. Lee and Aggrieved Employees for all wages earned at the correct rates of pay, including minimum wages, straight time wages, and overtime compensation. Accordingly, Employer violated IWC Wage Order No. 5 and California Labor Code sections 204, 510, 1194, 1197, 1197.1 and 1198.

Ms. Lee and Aggrieved Employees will therefore seek unpaid wages; PAGA default penalties; penalties pursuant to paragraph (20)(A) of IWC Wage Order No. 5; penalties pursuant to California Labor Code sections 558, 1197.1, and 1199; compensation pursuant to Labor Code Section 1194; and attorneys' fees and costs.

2. FAILURE TO PROVIDE MEAL PERIODS AND PAY MEAL PERIOD PREMIUMS

Employer failed to provide Ms. Lee and Aggrieved Employees with legally-compliant 30-minute meal periods. Ms. Lee and Aggrieved Employees were required by Employer to work more than five (5) hours per day, but were not provided with timely, uninterrupted 30-minute meal periods. Further, Ms. Lee and Aggrieved Employees were not provided with a second uninterrupted 30-minute meal period when they worked over ten (10) hours per day. Employer regularly required Ms. Lee and Aggrieved Employees to work through their first and second meal periods, to take their first meal period after their fifth (5th) hour of work, and/or to take their second meal periods after their tenth (10th) hour of work.



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Employer's policies, practices, and procedures were responsible for the violations alleged above and prevented Ms. Lee and other Aggrieved Employees from taking timely, complete and duty-free meal periods because, amongst other reasons: (1) Employer did not have legally-compliant policies regarding the provision and timing of meal periods or systematically disregarded its own purported meal period policies; (2) Employer's management at various levels, affecting all hourly-non-exempt employees, failed and refused to implement and enforce legally compliant meal period policies and practices; (3) Employer failed to adequately inform and train Ms. Lee and other Aggrieved Employees regarding their right to take timely, uninterrupted, and duty-free meal periods; (4) Employer failed to adequately inform and train Ms. Lee and other Aggrieved Employees about their right to premium wages for non-compliant meal periods; (5) Employer failed to ensure that there was adequate staffing to allow Ms. Lee and other Aggrieved Employees to take timely, uninterrupted, and duty-free meal periods; and (6) Employer's policy and culture prevented Ms. Lee and other Aggrieved Employees from taking timely, uninterrupted, and duty-free meal periods because of the priority placed on completing job requirements over employees right to receive timely, uninterrupted, and duty-free meal periods. Ms. Lee and Aggrieved Employees were not provided with a compliant meal period. Moreover, they were regularly pressured to work through their meal period due to workload demands and understaffing. In addition, Employer required Ms. Lee and Aggrieved Employees to sign meal period waivers as a condition of employment, even though a meal period was not offered to them in the first place.

Ms. Lee and Aggrieved Employees did not receive an extra hour of wages at their regular rate of pay for the meal periods which were not provided to them in compliance with California law.

Accordingly, Employer violated IWC Wage Order No. 5 and California Labor Code sections 226.7, 512(a) and 1198.

Ms. Lee and Aggrieved Employees will therefore seek PAGA default penalties pursuant to Labor Code section 2699; penalties pursuant to paragraph (20)(A) of IWC Wage Order No. 5; penalties pursuant to California Labor Code sections 558 and 1199; and attorneys' fees and costs.

3. FAILURE TO AUTHORIZE AND PERMIT REST PERIODS AND PAY REST PERIOD PREMIUMS

Employer failed to authorize and permit Ms. Lee and Aggrieved Employees take legally-compliant 10-minute rest periods. Employer required Ms. Lee and Aggrieved Employees to work through rest periods. Ms. Lee and Aggrieved Employees were not provided with uninterrupted, duty-free rest periods when they worked more than four (4) hours or a major fraction thereof. Further, Ms. Lee and Aggrieved Employees were not provided with a second uninterrupted, duty-free rest period when they worked more than six (6) hours in a day, or a third uninterrupted, duty-free rest period after working more than ten (10) hours in day. In the rare event that a rest period was taken, it was frequently interrupted or cut short. Moreover, Ms. Lee and Aggrieved Employees were not completely relieved of duty as required by *Augustus v. ABM Security Services, Inc.*, 2 Cal.5th 257 (2016).

Employer's policies, practices, and procedures were responsible for the violations alleged above and



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prevented Ms. Lee and other Aggrieved Employees from taking timely and complete rest periods because, amongst other reasons: (1) Employer did not have legally-compliant policies regarding the provision and timing of rest periods or systematically disregarded its own purported rest period policies; (2) Employer's management at various levels, affecting all hourly-non-exempt employees, failed and refused to implement and enforce legally compliant rest period policies and practices; (3) Employer failed to adequately inform and train Ms. Lee and other Aggrieved Employees regarding their right to take timely, uninterrupted, and duty-free rest periods; (4) Employer failed to adequately inform and train Ms. Lee and other Aggrieved Employees about their right to premium wages for non-compliant rest periods; (5) Employer failed to ensure that there was adequate staffing to allow Ms. Lee and other Aggrieved Employees to take timely, uninterrupted, and duty-free rest periods; (6) Employer required Ms. Lee and other Aggrieved Employees to remain on-call and respond to work-related requests at all times, including during rest periods, which included responding to in-person verbal interruptions; and (7) Employer's policy and culture prevented Ms. Lee and other Aggrieved Employees from taking timely, uninterrupted, and duty-free rest periods because of the priority placed on customer satisfaction over employees right to receive rest periods. Ms. Lee and Aggrieved Employees were only permitted one (1) rest break per shift, which could only be taken if there were no customers. Additionally, because Ms. Lee and Aggrieved Employees were required to remain on the premises at all times, their rest breaks were frequently interrupted by co-workers and customers, preventing Ms. Lee and Aggrieved Employees from being fully relieved of their duties.

When assigned to work both morning and evening shifts, Ms. Lee and Aggrieved Employees were permitted to take a total of thirty (30) minutes for rest breaks. However, Employer instructed Ms. Lee and Aggrieved Employees to take rest breaks whenever there was downtime, which often resulted in rest periods being delayed until the end of the evening shift, approximately thirty (30) minutes before clocking out.

Ms. Lee and Aggrieved Employees did not receive an extra hour of wages at their regular rate of pay for the rest periods which were not provided to them in compliance with California law.

Accordingly, Employer violated IWC Wage Order No. 5 and California Labor Code sections 226.7, and 1198.

Ms. Lee and Aggrieved Employees will therefore seek PAGA default penalties pursuant to Labor Code section 2699; penalties pursuant to paragraph (20)(A) of IWC Wage Order No. 5; California Labor Code sections 558 and 1199 penalties; and attorneys' fees and costs.

4. FAILURE TO TIMELY PAY WAGES DURING EMPLOYMENT

As to each pay period, Employer has failed to timely pay all wages earned because Ms. Lee and Aggrieved Employees were not paid all the wages they were owed including, *inter alia*, overtime compensation, straight time wages, minimum wages, and meal and rest period premiums. Accordingly, Employer violated California Labor Code section 204(a).



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Ms. Lee and Aggrieved Employees will therefore seek PAGA default penalties pursuant to Labor Code section 2699; penalties pursuant to California Labor Code sections 210 and 1199; and attorneys' fees and costs.

5. FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS

As a result of the practices described above, the wage statements provided to Ms. Lee and Aggrieved Employees failed to include the actual hours worked, the total hours worked, the actual gross and net wages earned, the correct rates of pay, the sick hours accrued and used by the employees, and all deductions. Accordingly, Employer violated California Labor Code sections 226(a) and 247.5.

Ms. Lee and Aggrieved Employees will therefore seek PAGA default penalties; penalties pursuant to California Labor Code section 226.3; and attorneys' fees and costs.

6. FAILURE TO MAINTAIN ACCURATE RECORDS

Employer has failed to maintain accurate records relating to Ms. Lee and Aggrieved Employees' work periods, meal periods, total daily hours worked, and total hours worked per payroll period. Accordingly, Employer violated IWC Wage Order No. 5 and California Labor Code sections 1198.5 and 1174(d).

Ms. Lee and Aggrieved Employees will therefore seek PAGA default penalties pursuant to Labor Code section 2699; penalties pursuant to paragraph (20)(A) of IWC Wage Order No. 5; California Labor Code section 1174.5 penalties; and attorneys' fees and costs.

7. FAILURE TO REIMBURSE NECESSARY EXPENDITURES

California Labor Code sections 2800 and 2802 require an employer to reimburse its employees for all necessary expenditures incurred by the employee in direct consequence of the discharge of his or her job duties or in direct consequence of his or her obedience to the directions of the employer. IWC Wage Order No. 5_ requires employers to provide employees with the tools or equipment necessary for the performance of their job. During the relevant time period, Ms. Lee and Aggrieved Employees incurred necessary business-related expenses and costs that were not fully reimbursed by Employer. These costs include, but are not limited to, mandatory personal cellphones for work-related communications and timekeeping. When working evening shifts, Ms. Lee and Aggrieved Employees were required to take photos of the café to send to the owners. Only once the owners approved the condition of the café could Ms. Lee and Aggrieved Employees clock out and go home. Additionally, Ms. Lee and Aggrieved Employees were required to download a mobile application on their personal cell phones to record their time worked.

Accordingly, Employer violated IWC Order No. 5 and California Labor Code sections 2800 and 2802.



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Ms. Lee and Aggrieved Employees will therefore seek PAGA default penalties pursuant to Labor Code section 2699; penalties pursuant to paragraph (20)(A) of IWC Wage Order No. 5; and attorneys' fees and costs.

8. FAILURE TO PROVIDE SICK PAY

Pursuant to the Healthy Workplace Healthy Family Act, Labor Code §§ 246 *et seq.*, employers must provide eligible employees with paid sick leave, accruing at a minimum rate of one hour per 30 hours worked, paid at the employees' regular rate of pay. Employer failed to provide Ms. Lee and Aggrieved Employees with paid sick leave. Additionally, Employer refused to honor Ms. Lee and Aggrieved Employees' request to use sick time for specific purposes, including the diagnosis, care, or treatment of a health condition.

Ms. Lee and Aggrieved Employees will therefore seek PAGA default penalties pursuant to Labor Code section 2699 and attorneys' fees and costs.

9. UNLAWFUL DEDUCTION, WITHHOLDING, OR COLLECTION OF WAGES PAID

California Labor Code section 221 provides that it is "unlawful for any employer to collect or receive from an employee any part of wages theretofore paid by said employer to said employee." Paragraph 20 of IWC Wage Order No. 5 further provides that "No employer shall collect or deduct from any employee any part of the wage that are paid unless such deductions are allowed by law." Despite this, Employer implemented a policy that allowed Employer to deduct tips from Ms. Lee and Aggrieved Employees' wages. Ms. Lee and Aggrieved Employees were not permitted to retain cash tips. Employer maintained a policy and practice of retaining cash tips left by customers for itself. Ms. Lee and Aggrieved Employees were only allowed to keep tips left by customers solely through digital payments, such as tips left on credit cards. Employer's policy allowing for deduction of wages does not comport with any exception enumerated in California Labor Code section 224, and is therefore unlawful under California law.

Ms. Lee and Aggrieved Employees will therefore seek PAGA default penalties pursuant to Labor Code section 2699; penalties pursuant to Labor Code section 225.5; penalties pursuant to paragraph 5 of IWC Wage Order No. 5; and attorneys' fees and costs.

10. FAILURE TO TIMELY PAY ALL WAGES UPON TERMINATION OF EMPLOYMENT

Upon the termination of employment, Ms. Lee and Aggrieved Employees were not paid all wages due immediately upon discharge or within seventy-two (72) hours for those who resigned. For example, Ms. Lee was given verbal notice of her immediate termination on August 5, 2025, but Employer did not give her final paycheck until August 7, 2025. Additionally, as a result of Employer's practices of requiring Ms. Lee and Aggrieved Employees to work off-the-clock without compensation, failing to pay proper overtime compensation, unlawful rounding practices, failure to properly calculate regular rates, and



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failure to accurately record all hours actually worked, Employer failed to pay Ms. Lee and Aggrieved Employees for all straight time wage, minimum wages and overtime compensation owed to them upon termination of their employment. Employer also failed to pay Ms. Lee and Aggrieved Employees for meal period premiums, rest period premiums, and accrued vacation time they were owed, amongst other wages. Accordingly, Employer violated California Labor Code sections 201 and 202.

Ms. Lee and Aggrieved Employees will therefore seek PAGA default penalties pursuant to Labor Code section 2699; penalties pursuant to California Labor Code sections 203, 1199, and 2699(f)(2); and attorneys' fees and costs.

Therefore, on behalf of the State of California and all Aggrieved Employees, Ms. Lee may seek all applicable penalties related to these violations of the California Labor Code pursuant to PAGA. If you have any questions or require additional information, please do not hesitate to contact us. Thank you for your attention to this matter.

Very Truly Yours,

Kristy Connolly

Notice provided to Employer via Certified Mail (9414 7111 0549 5878 4310 48)

Foodmasters LLC DBA *Matcha Café Maiko San Diego*
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